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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,912	10/31/2003	Debbie Glassberg	MAT 318	3003

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EXAMINER

BHAT, NINA NMN

ART UNIT	PAPER NUMBER
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1764

DATE MAILED: 04/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/698,912

Applicant(s)

GLASSBERG ET AL.

Examiner

N. Bhat

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1,2,4,5-7,9,11-12,18, 20 and 22 rejected under 35 U.S.C. 102(b) as being anticipated by F.U.N. Place Recipe Box Archives.

F.U.N. Place Recipe Box teaches a Children's Chocolate Cake Mix which is packaged in a sealable bag such as Ziploc bags, to use this cake mix, the package cake mix is mixed with water. The recipes fully anticipate applicant's as claimed. Also a frosting is described which can be used to frost or top the cake.[See all recipes and instruction for use with the Mattel Easy Bake Oven]

3. Claims 1,2,4,5-7,9,11-12,18, 20 and 22 rejected under 35 U.S.C. 102(b) as being anticipated by Johannes '309 or '341.

Johannes teaches a dry mix for frosted brownies. The brownie dry mix is reconstituted with by the addition of water. A frosting which is a separate package than the dry brownie mix is reconstituted with water, which is then placed on the bottom of a baking pan, a separate package containing the brownie mix is reconstituted with water and poured over the frosting layer, the brownie and frosting is then baked to provide a frosted brownie edible foodstuff having a texture and flavor appropriate for the target food item. [Note Column 1, lines 1-39 and Column 3, lines 20-25]

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4. Claims 1, 3-8, 18-19 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Ehrlich USP 3,393,074.

Ehrlich teaches a preparation of a cake like dessert at room temperature or without the addition of heat using a dry mix dessert or cake mix which is reconstituted with water, which are transformed in solid dessert such as cakes, cookies, brownies without baking. Ehrlich further teaches that the desserts are ready to eat without baking or chilling, the user can include additional ingredients and toppings like chocolate chips, fruits, nuts, dates, raisins and flavorings. The dessert mix is packaged in boxes plastic bas or pouches, metal foil wrappers or any suitable wrapping. Ehrlich specifically teaches a child-safe preparation which has the appearance that is appropriate to a target food item, preparable at or below room temperature, sealed in a packaged, includes toppings thus anticipating applicant's claims.[See Column 1, lines 18-70 and Column 2, lines 1-62]

5. Claims 1, 3-8, 18-19 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Block USP 3,409,442.

Block teaches a no bake cake mix which includes a packaged bakery product which is comminuted or ground into a crumb-like form and intimately blended with a foam which serves to pass to the crumbs the requisite quantity of moisture for optimum and uniform hydration. The cake mix is a dry mix, which is reconstitutable with water. the bakery crumb used in the present invention can be sold as a package food item which includes instructions on how to prepare the cake or dessert, the dessert is

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prepared with no heat or no baking thus fully anticipating applicant's claims.[Note Column 4, line 29 et seq. to Column 6 lines 11-29]

6. Claims 1,2, 4, 5, 18, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Gawrilow.

Gawrilow teaches pizza snack food product which is a dry mix which is reconstituted with chilled water to provide a pourable batter which produces upon baking a crust which resembles a traditional pizza crust. After preparing the dry mix, by the addition of water, one or more toppings are placed on top of the crust. [Note Column 4, lines 15-65 and claim 1] The Gawrilow patent fully anticipates applicant's claims by providing an edible foodstuff preparable by the addition of water to the food formulation the edible foodstuff has a texture and a flavor appropriate for the target food item. The food formulation includes a topping, which is applied to the foodstuff.

7. Claims 1,13-14 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 58020151.

JP 58020151 teaches a powdery or granular composition, which is reconstitutable by the addition of hot, water or milk to provide a cheese fondue. It is inherent in the meaning of "fondue" that items are to be dipped into the cheese mixture to coat food items such as bread, croutons, vegetables such as broccoli, cauliflower, or any other type of vegetable.

8. Claims 1 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Cooper et al. USP 3,808,730

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Cooper et al. teach a toy oven in combination with a packaged food formulation, which provides a child safe preparation of an edible food stuffs that it representational of a target food time. Specifically, Cooper et al. teach providing packages (20) and the contents which includes prebaked comminuted dough particles having a binder therein which is deposited into a mixing bowl or the like, water, milk or another type of fluid is supplied to the mixture in bowl (22) and the food parties are mixed the liquid activating the binder, the wet particles are then placed into a mold (18) which can then be placed into the oven by a child.[Note Column 3, lines 1-52] A child can simulate the activity of baking a cake but without the use of heat or electricity thus providing an edible cake and anticipating applicant's inventions as claimed.

9. Claims 1, 16-17 are rejected under 35 U.S.C. 102(b) as being anticipated by EP0619081

EP0619081 teaches a gel forming composition an particularly to a one package gel forming dry mix composition which rapidly from a gel upon reconstitution with water, which can be used to provide dessert type gels. Note Page 2, lines and Page 4, lines 40-50]

10. Claims 1, 10, 16-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Cuadrado et al.

Cuadrado et al. teach a readily dispersible sugar containing food mix, which is packaged into a small container, which can be used in making instant puddings or instant beverage by dispersing the dry mix into a fluid. The food mix as described by Cuadrado et al. is used in making a chocolate flavored spoon-dispersible instant

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pudding. Also taught by Cuadrado et al. is providing a French vanilla flavored soluble coffee mix, which can be made into a ready to drink formulation upon reconstitution with water. The readily dispersible dry food mix taught by Cuadrado et al. fully anticipates applicant's claims.

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP 58020151.

As stated above and reiterated, JP 58020151 teach a powdery or granular composition, which is reconstitutable by the addition of hot water or milk to provide a cheese fondue. It is inherent in the meaning of "fondue" that items are to be dipped into the cheese mixture to coat food items such as bread, croutons, vegetables such as broccoli, cauliflower, or any other type of vegetable.

However, JP58020151 does not teach dipping marshmallow candies and edible gelatin candies into the fondue.

It would have been obvious from the teachings of JP 58020151 to provide a food formulation, which includes dippable ingredients for dipping into the foodstuff. JP 58020151 teaches a making a reconstitutable cheese fondue or a savory fondue into which other food items namely bread or croutons or vegetables are dipped into the fondue. To dip the marshmallow or candy specifically into a fondue or a sweet fondue would have been obvious to the ordinary artisan. In applicant's claims the fondue is generic which can mean a savory fondue or a sweet fondue, and thus to dip corresponding sweet candies, fruits or marshmallows into a sweet fondue or dipping bread, croutons or vegetables into a savory or cheese fondue would have been obvious to one having ordinary skill in the art at the time the invention was made absent criticality in showing.

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hoyland teaches a toy cooking apparatus comprising a housing adapted to receive means for holding a comestible. Guhl et al. teach a powdered cheesecake mix. Weaver et al. teach a cold mix cake icing. Honoosie teaches a cake in a can kit. Moder et al. teach a self-topping cake mix for making the cake in two distinct layers in a microwave oven. Bake et al. teach a no stir dry cake mix. Kuhn teaches a toy oven. Hembling et al. teach quick setting el mix. Hamilton teaches dry mix beverage and pudding. Montminy teaches a method of packaging cake mix and frosting therefor.

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15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. Bhat whose telephone number is 571-272-1397. The examiner can normally be reached on Monday-Friday, 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on 571-272-1444. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



N. Bhat
Primary Examiner
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